

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

LYNDA L. OTT,

Plaintiff,

V.

WELLS FARGO HOME MORTGAGE,

Defendant.

CASE NO. 8:07CV190

ORDER on INITIAL REVIEW

This matter is before the court on the plaintiff's Motion to Proceed in Forma Pauperis ("IFP") (Filing No. 2), and the plaintiff's Motion for Appointment of Counsel. (Filing No. 3).

Motion for Appointment of Counsel

The court cannot routinely appoint counsel in civil cases. In *Davis v. Scott*, 94 F.3d 444, 447 (8th Cir. 1996), the Eighth Circuit Court of Appeals explained:

‘Indigent civil litigants do not have a constitutional or statutory right to appointed counsel.’... The trial court has broad discretion to decide whether both the plaintiff and the court will benefit from the appointment of counsel, taking into account the factual and legal complexity of the case, the presence or absence of conflicting testimony, and the plaintiff's ability to investigate the facts and present his claim.

(Citations omitted.) The plaintiff has capably presented the factual basis for the claims in this proceeding. I find that appointment of counsel is not necessary to enable the plaintiff to pursue those claims. Therefore, the motion for appointed counsel, is denied.

Motion to Proceed In Forma Pauperis

Because the plaintiff qualifies to proceed IFP, filing no. 2 is granted. The plaintiff alleges that the defendant used extreme and outrageous conduct and false statements to

deprive plaintiff of the value of her home. The plaintiff's complaint need not be dismissed on initial review. Therefore, as initial review of the complaint is now concluded, it is time for the plaintiff to obtain service of process on the defendants, as set forth below. Because the plaintiff is proceeding IFP, the U.S. Marshal will serve the defendants, after the plaintiff completes and returns the appropriate forms.

IT IS THEREFORE ORDERED:

1. The plaintiff's Motion for Leave to Proceed In Forma Pauperis (Filing No. 2) is granted.
2. The plaintiff's Motion for Appointment of Counsel (Filing No. 3) is denied.
3. To obtain service of process on the defendants, the plaintiff must complete and return forms which the Clerk of Court will provide. The Clerk of Court shall provide the plaintiff with summons and 285 forms and a copy of this order. The plaintiff shall, as soon as possible, send the completed summons and 285 forms back to the Clerk of Court. In the absence of the forms, service of process cannot occur.
4. Upon receipt of the completed summons and 285 forms, the Clerk will sign each summons, to be forwarded, together with a copy of the complaint, to the U.S. Marshal for service on the defendants. The Marshal shall serve each summons and complaint without payment of costs or fees. Service may be effected by mail pursuant to Fed. R. Civ. P. 4 and Nebraska law in the discretion of the Marshal.
5. Fed. R. Civ. P. 4 requires service of a complaint on a defendant within 120 days of filing the complaint. However, because in this order the plaintiff is informed for the first time of these requirements, the plaintiff is granted, on the court's own motion, an extension of time until 120 days from the date of this order in which to complete service of process. The plaintiff is hereby notified that failure to obtain service on a defendant within 120 days of the date of this order may result in dismissal of this matter without further notice as to that defendant.
6. If service has not been obtained on no defendant by the deadline set forth above, the Clerk of Court shall notify the court.
7. After an appearance has been filed by a defendant, the plaintiff shall serve on the defendant or, if an appearance has been entered by counsel, upon such counsel, a copy of every future pleading, letter or other document submitted to the court. Parties usually serve copies of documents on other parties by first class mail.

8. The plaintiff shall include with each document submitted to the court a "Certificate of Service" stating the date a true and correct copy of such document was mailed to the defendants or to the attorney of a represented defendant. To send communications to the court without serving a copy on the other parties to the case violates the rules of court.

9. Each defendant shall have twenty (20) days after receipt of the summons to answer or otherwise respond to the complaint.

10. The parties are bound by the Federal Rules of Civil Procedure and by the Local Rules of this court. The federal rules are available at any law library, and the local rules are available from the Clerk of Court, and also on the court's web site at www.ned.uscourts.gov.

11. The plaintiff shall keep the court informed of her current address at all times while this case is pending.

DATED this 11th day of June 2007.

BY THE COURT:

s/F.A. Gossett
United States Magistrate Judge

INSTRUCTIONS: SUMMONS FORMS AND FORMS 285
for plaintiffs proceeding pro se and in forma pauperis

1. A summons form provides notice to a defendant that the defendant has been sued and must answer or otherwise respond to the complaint.
2. A Form USM-285 ("285 form") provides directions to the U.S. Marshal as to whom to serve with process and where to serve the defendant(s). The U.S. Marshal serves the defendant(s) without cost to you because you are proceeding in forma pauperis ("IFP").
3. Do not copy your complaint to attach to the summons; the court will do that for you.
4. You may serve only defendant(s) named in the case caption of the complaint. If you want to serve additional defendant(s), you must move for leave to amend the complaint to add the additional defendant(s) to the case caption.
5. Be sure to print your case number on all forms.
6. You must give an address for each defendant to be served. The U.S. Marshal will not know a defendant's address.
7. Where a summons form states: "You are hereby summoned and required to serve on plaintiff's attorney" print your name and address.
8. Where a form 285 states: "send notice of service copy to requestor at name and address" print your name and address.
9. Where a form 285 calls for "signature of attorney or other originator" provide your signature and date the form.
10. Leave the last part of the summons form blank. The court will fill in the number of days in which the defendant must answer, and the court will sign and date the form.